

DEPARTMENT OF STATE REVENUE

REVENUE RULING #2000-03IT

August 2, 2000

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ISSUE

Adjusted Gross Income Tax, Supplemental Net Income Tax and Gross Income Tax –
Classification of Delaware Business Trusts for Indiana Income Taxation

Authority: IC 6-3-1-11, IC 6-3-8-2, Rule 45 IAC 1.1-1-22, IC 23-5-1-2, IC 6-2.1-2-2

The Taxpayer requests the Department to rule on the correct classification of two Delaware Business Trusts for Indiana income taxation.

STATEMENT OF FACTS

The Taxpayer is a nation-wide lessor of motor vehicles. The Taxpayer plans on forming two new subsidiary entities that will be used to hold title to certain motor vehicles that will be leased throughout the United States. Both entities will be formed as Delaware business trusts, pursuant to Chapter 38 of Title 12 of the Delaware Code, Section 3801. Trust #1 will be a direct subsidiary of the Taxpayer and will be the beneficial owner of Trust #2. Trust #2 will be a direct subsidiary of Trust #1 and will have beneficial ownership and legal title to the vehicles being leased. The Taxpayer will service the leases (i.e., to include the performance of all of the obligations of the lessor under the leases and the making of advances in respect of delinquent monthly payments and certain expenses relating to Trust #2).

Under the terms of a trust agreement, the Taxpayer will segregate certain portfolios of leased assets to Trust #2 representing special units of beneficial interest (each a "SUBI"). Under Delaware law SUBIs are not liable for the debt of other separate portfolios or for Trust #2 as a whole. Under the trust agreement, Trust #1 will have unlimited liability with respect to assets not assigned to a SUBI. The Taxpayer will form a special purpose entity ("SPE") that will be a Delaware business trust and a wholly owned subsidiary of the Taxpayer or one of its affiliates. Trust #1 will be the initial beneficiary of Trust #2 and the Taxpayer will be the sole beneficiary of Trust #1. From time to time, Trust #1 will cause beneficial interests in the leased assets owned by Trust #2 to be issued in the

form of a SUBI. Trust #2 will issue the SUBIs to Trust #1, which in turn will assign/pledge them to the SPE. The SPE will assign/pledge the SUBI to a securitization trust which will issue securities, the payments on which are backed by payments made on or in respect of the related leases and leased vehicles. Although SUBIs will be pledged to investors, title and legal ownership of the vehicles will remain with Trust #2.

Currently, the Taxpayer receives a Manufacturer's Statement of Origin ("MSO") or Certificate of Origin ("CO") to represent ownership of the vehicles prior to procuring a title. Once the vehicle is either leased or sold, the back of the MSO is completed and the MSO is then assigned to the purchaser. Title to the vehicle is then issued to the purchaser.

As part of the new lease-financing program, the Taxpayer will assign the MSO for each vehicle to Trust #2. In addition, a certificate of title and registration will be issued in the name of Trust #2 as the owner of each motor vehicle. As beneficiary, Trust #1 will have the right to assign/pledge all or part of its beneficial interest in Trust #2 (represented by the SUBIs).

For Federal income tax purposes, Trust #1 and Trust #2 will not be classified as associations (or publicly traded partnerships) taxable as corporations under the Federal "check-the-box" regulations. Instead Trust #1 and Trust #2 will be classified as disregarded entities for Federal income tax purposes.

DISCUSSION

Pursuant to IC 6-3-1-11, the Indiana Adjusted Gross Income Tax Statutes incorporate by reference the Internal Revenue Code and Treasury Regulations in effect January 1, 1999 which include the "check-the-box" regulations. Such being the case, Trust #1 and Trust #2 will be classified as "disregarded entities" for Indiana adjusted gross income taxation and supplemental net income taxation (note that a determination applicable to adjusted gross income tax is, also, applicable to supplemental net income tax as provided by IC 6-3-8-2) to the extent they are, in fact, classified as same for federal income taxation.

The Indiana Gross Income Tax Code, unlike the Indiana Adjusted Gross Income Tax Code, does not incorporate by reference the Internal Revenue Code and Treasury Regulations. As a result, the Gross Income Tax Code (Regulations) is the sole authority for determining the gross income tax classification of Trust #1 and Trust #2. Trust #1 and Trust #2, therefore, will be classified for gross income taxation as formed, Delaware Business Trusts.

Rule 45 IAC 1.1-1-22 provides that a business trust defined in IC 23-5-1-2 is defined as a "taxpayer" for gross income taxation. A "taxpayer's" Indiana gross income is subject to gross income taxation pursuant to IC 6-2.1-2-2.

IC 23-5-1-2(a) states:

Sec. 2. For the purpose of this chapter:

- (a) A "business trust" is an unincorporated business association which is created by a trust instrument, pursuant to common law or enabling legislation, under which property is held, managed, administered, controlled, invested, reinvested, or operated, or business or professional activities for profit are carried on, by a trustee or trustees for the benefit and profit of such person or persons as are or may become the holders of transferable certificates, issued pursuant to the provisions of the trust instrument, which have either restricted or unrestricted transferability, evidencing beneficial interests in the trust estate, including but not limited to a trust of the type known at common law as a business trust, or Massachusetts trust, or a trust qualifying as a real estate investment trust under Section 856 of the Internal Revenue Code or under any similar statute. Such business trust may provide that the holders of such certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations for profit. A business trust shall not be known as a land trust, under which a trustee or trustees holds the legal or equitable title to real estate, which does not issue transferable certificates of beneficial interest and which has less than one hundred beneficiaries. Nothing in the specific exclusion shall be construed to enlarge the operation or application of this chapter.

Here then, Trust #1 and Trust #2 will not be subject to Indiana gross income taxation to the extent they are not defined as "business trusts" under IC 23-5-1-2. Conversely, Trust #1 and Trust #2 will be subject to Indiana gross income taxation to the extent they are defined as "business trusts" under IC 23-5-1-2.

RULING

The Department rules that Trust #1 and Trust #2 will be classified for Indiana adjusted gross income taxation and supplemental net income taxation as "disregarded entities" to the extent that they are classified as such for federal income taxation.

The Department, further, rules that Trust #1 and Trust #2 will be classified as Delaware Business Trusts for Indiana gross income taxation. Whether or not Trust #1 and Trust #2 will be subject to Indiana gross income taxation will be determined by whether or not Trust #1 and Trust #2 are defined as "business trusts" under IC 23-5-1-2.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue